

REMARKS

Reconsideration and allowance of this application are respectfully requested. Claims 2 and 5-9 are cancelled, and claims 11-12 are added. Claims 1, 3-4 and 10 remain in this application as amended herein. Accordingly, claims 1, 3-4 and 10-12 are submitted for the Examiner's reconsideration.

In the Office Action, the Examiner rejected claims 1, 3-4 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Reeder (International Publication No. WO 97/14085) in view of Grundy (U.S. Patent No. 5,375,240) in view of Hellman (U.S. Patent No. 4,658,093) and in view of Oshima (U.S. Patent No. 6,081,785). Applicant submits that the claims are patentably distinguishable over the cited references.

The Examiner has acknowledged that "Reeder does not expressly disclose said software program providing system authorizing said user terminal to have an unlimited number of accesses to the purchased software program without the at least one supplemental pay function when access to the at least one supplemental pay function is not requested" but contends that "Grundy discloses a system for distributing and managing access to a software program that includes authorizing unlimited access to the software program in evaluation mode without any supplemental pay functions when full-function mode is not requested so that the users may freely try and evaluate the software program without paying any additional fees" (emphasis added) and refers to column 4 lines 28-42 and 51-59 of Grundy.

As described in the prior Amendment dated October 12, 2006, Grundy is only concerned with allowing potential users to try and evaluate certain software functions so that the user may decide whether to purchase the software product. Grundy specifically describes:

According to the present invention, the software products are created by software developers capable of being operated in two modes. The first mode is a full-function mode, where all the functions and features of the software product are available to the user of the software product. The second mode is an evaluation mode, where only certain functions, decided by the software developer, can be accessed by the user. The evaluation mode allows potential users to try and evaluate features of the software product. (Emphasis added.)

(See col.4 ll. 11.33-37.) Grundy is not at all concerned with providing and managing access to a purchased software program.

In the present Office Action, the Examiner acknowledges that the evaluation mode is for potential users prior to purchasing the software but now argues that "this does not preclude applying Grundy's teachings to an already 'purchased software program'". However, the Examiner's assertion defies logic because no reasonable individual would pay the full purchase price for software and then run it an evaluation mode that precludes access to functions for which the user has already paid. Moreover, no person of ordinary skill in the relevant art would expend time, money, and effort to develop and incorporate such an evaluation mode into a software product since adding the evaluation mode would neither encourage more people to purchase the product nor be used after the purchase of the product.

Nevertheless, the Examiner asserts that Grundy supports his position and refers to column 1, lines 49-61 of the patent. However, Grundy merely describes there the concept of "shareware" and describes that the entire software program is distributed free of charge or for a nominal fee to allow a potential purchaser to use the software for a short time period. Then, if the user decides to keep the software, the user is expected to pay the full honorarium to the software developer. Grundy does not describe that a potential user pays the full

purchase price, i.e., purchases the software, before evaluating the software. Hence, the relied-on sections of Grundy do not disclose or suggest authorizing a user terminal to have an unlimited number of accesses to a purchased software program without at least one supplemental pay function when access to the at least one supplemental pay function is not requested, as defined in claim 1.

Neither the relied-on sections of Hellman nor the relied-on sections of Oshima remedies the above deficiencies of Reeder and Grundy.

Therefore, the relied-on sections of the references do not disclose or suggest:

when the user does not request access to the at least one supplemental pay function of the purchased software program, said software program authorizing said user terminal to have an unlimited number of accesses to the purchased software program without the at least one supplemental pay function

as called for in claim 1.

It follows that neither the relied-on sections of Reeder, the relied-on sections of Grundy, the relied-on sections of Hellman, nor the relied-on sections of Oshima, whether taken alone or in combination, discloses or suggests the software program providing system defined in claim 1, and the claim is therefore patentably distinct and unobvious over the cited art.

Claims 3 and 4 depend from claim 1, and each is therefore distinguishable over the cited art for at least the same reasons.

Independent claim 10 includes limitations similar to those set out in the above excerpt of claim 1 and, consequently, is patentably distinguishable over the cited references for at least the same reasons.

Accordingly, withdrawal of the rejection under 35 U.S.C. § 103 is respectfully requested.

New claims 11 and 12 depend from claim 10, and each is therefore distinguishable over the cited art at least for the same reasons. Claims 11 and 12 include limitations similar to those set out in claim 3 and 4, respectively, and each is similarly supported.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that the Examiner telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which the Examiner might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: April 12, 2007

Respectfully submitted,

By 

Lawrence E. Russ

Registration No.: 35,342  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicant